

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.14659 of 2021**

Arising Out of PS. Case No.-141 Year-2018 Thana- KHAJAULI District- Madhubani

KHAIKA PASWAN Son of Kunji Paswan Resident of Village - Ekdara, P.S.-
Khajauli, District - Madhubani

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ravi Prakash, Advocate

For the Opposite Party/s : Mr. Md. Fahimuddin, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 10-09-2021 Learned counsel for the petitioner undertakes to

remove all the defects as pointed out by office within four weeks

after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Md.
Fahimuddin, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in

connection with Khajauli P.S. Case No. 141 of 2018 registered

for the offences punishable under Sections 341, 323, 376, 313,

452, 504 and 34 of the Indian Penal Code and Section 3/4 of the

Protection of Children from Sexual Offences (POCSO) Act,

2012. He is in custody since 07.08.2020. The petitioner has no

criminal antecedent.

The F.I.R. giving rise to the present case has been

lodged on 04.08.2018 on the basis of a complaint petition filed on 30.11.2017. In the complaint petition the victim girl had alleged that her parents and brother all were living in the State of Punjab for their livelihood. She claims that she was living with her aunt in the village. The victim alleges that the accused no. 1 and accused no. 2 had their bad eyes on her. The allegation is that on 21.03.2017 at about 3 pm both the accused persons entered into her house with an intention to commit rape, assaulted her on the point of dagger, put her down, took out her clothes and both the accused, namely this petitioner and co-accused Vikram Paswan committed rape on her. While going back, both of them threatened her that if she would disclose it to anybody else then she would be killed. Further allegation is that after the said occurrence, the petitioner and co-accused Vikram Paswan were continuously committing rape on her as a result whereof the victim became pregnant and was carrying pregnancy of six months which was being discussed in the village. It is alleged that on 02.09.2017, Vikram Paswan and this petitioner took her to a private clinic at Jainagar with an intention to get her aborted. In the said act, the co-accused Tuntun Paswan and others were also involved.

The informant further alleges in her complaint petition that when this fact was brought to the notice of the parents of the

victim, they came to village and thereafter these things were discussed in a panchayati held on 26.11.2017. It is then alleged that all the accused persons came to the door of the victim, abused her and assaulted her parents, they were injured but a large number of co-villagers assembled there and saved them.

Learned counsel submits that the allegations mentioned in the complaint petition were sent to the police station for registering F.I.R. and investigation. Two months after registration of the F.I.R., the victim girl was taken to the court of learned Judicial Magistrate-I Class for her statement under Section 164 Cr.P.C. At this stage, she has made statement which are materially different from what had been alleged in the complaint petition. In her Section 164 Cr.P.C. statement, she alleges that her father is working in Home Guard in the District of Gaya. She further says that she is residing in her village with her mother and younger sister. Thereafter she confines her allegation as regards the occurrence against this petitioner only. She says that while she was in her house with her younger sister, this petitioner came there at 10 am and forcibly committed rape on her. After two/three days when she had taken her she-goats for grazing in the Middle High School, there also this petitioner had committed rape on her but she did not disclose it to anyone because of threat. Three-four days thereafter also this petitioner

committed rape and at this stage it is stated that co-accused Vikram Paswan caught hold of her hand while the petitioner was committing rape on her. She categorically says in complete contrast to her allegations in the complaint petition that co-accused Vikram Paswan did not commit rape on her. It is then pointed out that the petitioner and co-accused persons came to her house, assaulted her and her parents and threatened her. It is alleged that after rape she had become pregnant and on finding her condition she disclosed it to her mother.

Learned counsel submits that even at this stage there is a material difference because in the complaint petition she says that her parents came to know about this from the villagers. It is claimed that this petitioner promised to marry her and she was asked not to lodge a case but thereafter the petitioner and co-accused persons took her and her mother to a hospital where the six months old foetus was aborted. She did not remember the name of the hospital. It is stated that on 06.10.2018 her statement was recorded by police and on that day she was medically examined.

Learned counsel submits that the complete contrast in the statement of the victim makes her unbelievable on her own and her statements are liable to be seen with suspicion.

Learned counsel further submits that in course of

investigation neither the victim nor her mother has disclosed the name of the hospital where the abortion was allegedly performed. The I.O. has not found any information in this regard.

Learned counsel further submits that the allegation is that the victim and her parents were assaulted and they had suffered injury but no injury has been found on the body of the informant and her parents, thus all these parts of the allegations were introduced in the complaint petition only on legal advice.

Learned counsel further submits that the medical examination report of the victim girl shows no injury on her body and the conclusion of the Medical Board writes “according to physical and pathological examination no medical evidence of sexual offence found at the time of examination.”

Learned counsel, thus submits that in these facts and circumstances where the falsity writs large on the face of the statements made in the complaint petition and in the statement under Section 164 Cr.P.C. which has been recorded after about eleven months from the date of filing of the complaint, the petitioner having spent one year in jail deserves privilege of bail.

Mr. Md. Fahimuddin, learned A.P.P. for the State has opposed the prayer for bail of the petitioner. His main contention is that the victim girl has been found aged sixteen years. So far as the submission of learned counsel for the petitioner that there are

complete variations as regards the vital facts in the complaint petition and the 164 Cr.P.C. statements, the same could not be controverted. Learned A.P.P. has confirmed to this Court that the victim girl has though stated in the complaint petition that she was taken to the hospital for abortion by the accused persons and the same was a private hospital at Jainagar, in her statement under Section 164 Cr.P.C. she says that she and her mother both were taken to the hospital where abortion was done, still neither the victim nor her mother has disclosed the name of the hospital.

Learned A.P.P. has further confirmed that in the complaint petition there is a categorical allegation that the petitioner and co-accused Vikram Paswan had committed rape on her on several occasions but in her 164 Cr.P.C. statement she has changed and made submission that only this petitioner had committed rape. The medical examination report as quoted above has not been disputed.

Considering the facts and circumstances of the case, in the opinion of this Court the petitioner has pointed out the material variations in the statements of the victim and the other materials as discussed above to persuade this Court to enlarge him on bail, let the petitioner above named be enlarged on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the

satisfaction of learned Additional Sessions Judge-cum-Special Judge-VI, (POCSO Act), Madhubani in connection with Khajauli P.S. Case No. 141 of 2018 subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that after release on bail, the petitioner shall not come in contact with the informant/victim and her family during trial and violation of this condition shall invite action towards cancellation of bail.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

This application stands disposed accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.